

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

RANDALL W. BEALL,

Petitioner,

vs.

PALMER, *et al.*,

Respondents.

3:10-cv-00706-LRH-VPC

**ORDER**

This action is a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner, a prisoner at the Northern Nevada Correctional Center, has filed a petition and has paid the filing fee for this action. (Docket #1). The Court directed petitioner to show cause why the petition should not be dismissed as untimely and successive (docket #4), pursuant to 28 U.S.C. § 2244(b)(3) *et seq.* Petitioner has filed a brief in apparent response to that order attaching copies of various documents and orders received from this Court addressing several and various actions he has filed herein. The brief argues the merits of his petition and none of the documents provide evidence that he has requested and received leave of the Ninth Circuit Court of Appeals to file this petition. *See* Notice, docket #5. The petition shall, therefore, be dismissed with prejudice.

**Certificate of Appealability**

In order to proceed with an appeal of this order, petitioner must receive a certificate of appealability. 28 U.S.C. § 2253(c)(1); Fed. R. App. P. 22; 9<sup>th</sup> Cir. R. 22-1; *Allen v. Ornoski*, 435 F.3d 946, 950-951 (9<sup>th</sup> Cir. 2006); *see also United States v. Mikels*, 236 F.3d 550, 551-52 (9<sup>th</sup> Cir. 2001). Generally, a petitioner must make “a substantial showing of the denial of a constitutional

right” to warrant a certificate of appealability. *Id.*; 28 U.S.C. § 2253(c)(2); *Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000). “The petitioner must demonstrate that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” *Id.* (quoting *Slack*, 529 U.S. at 484). In order to meet this threshold inquiry, the petitioner has the burden of demonstrating that the issues are debatable among jurists of reason; that a court could resolve the issues differently; or that the questions are adequate to deserve encouragement to proceed further. *Id.*

Pursuant to the December 1, 2009 amendment to Rule 11 of the Rules Governing Section 2254 and 2255 Cases, district courts are required to rule on the certificate of appealability in the order disposing of a proceeding adversely to the petitioner or movant, rather than waiting for a notice of appeal and request for certificate of appealability to be filed. Rule 11(a). This Court has considered the issues raised by petitioner, with respect to whether they satisfy the standard for issuance of a certificate of appealability, and determines that none meet that standard. The Court will therefore deny petitioner a certificate of appealability.

**IT IS THEREFORE ORDERED** that the petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 is **DISMISSED WITH PREJUDICE**.

**IT IS FURTHER ORDERED** that no Certificate of Appealability shall issue. The Clerk shall enter judgment accordingly.

Dated this 10th day of December, 2010.



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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE